

## **MEMORANDUM**

**TO: Foundational Provision Subcommittee Members**

**FROM: Jim Tomkovicz, Chair**

**RE: Final Proposals regarding Attempt, Solicitation, and Conspiracy**

**DATE: October 25, 2008**

### **ATTEMPT**

**(1) CRIMINAL LIABILITY FOR ATTEMPT: Unless otherwise provided, an attempt to commit a crime is a crime.**

**(2) MINIMUM CONDUCT REQUIRED FOR ATTEMPT: To be guilty of an attempt, a person must, at a minimum, do or omit to do anything which is a substantial step toward commission of a crime and such act or omission must strongly corroborate the person's criminal purpose.**

**(3) CULPABILITY REQUIRED FOR ATTEMPT: To be guilty of an attempt,**

**(a) Conduct: With regard to conduct, a person must purposely do or omit to do anything which is a substantial step toward commission of the crime with the purpose of doing or omitting to do acts sufficient for completion of the crime.**

**(b) Results: With regard to any result element of the completed crime, a person must have the purpose to cause or the belief he or she will cause such result element.**

**(c) Circumstances: With regard to any circumstance element of the completed crime, a person must have the culpability, if any, that is required for commission of the completed crime.**

**(4) IMPOSSIBILITY: Impossibility is not a defense to attempt. If the nonexistence of a fact or circumstance makes it impossible for a person to complete a crime, the person can be held liable for an attempt to commit the crime if he or she believes that the fact or circumstance exists.**

**(5) RENUNCIATION DEFENSE: When a person has not completed the conduct necessary to commit a crime, it is an affirmative defense to a prosecution for attempt that he or she abandoned the effort to complete the crime and when a person has completed the conduct necessary to commit a crime, but has an opportunity to prevent completion of the crime, it is a defense that he or she prevented completion of the crime. For such abandonment or**

prevention to constitute a defense, the circumstances must demonstrate a voluntary and complete renunciation of the person's criminal purpose. The establishment of a renunciation defense does not affect the liability of an accomplice who did not join in the abandonment or prevention of the offense.

A renunciation is not voluntary and complete if it is motivated, in whole or in part, (a) by a belief that circumstances exist which increase the possibility that the person or another person will be detected or apprehended or which make completion of the crime more difficult or (b) by a decision to postpone the crime until another time or to substitute another victim or another but similar objective.

The defendant must raise the defense of renunciation, upon which the state must disprove renunciation beyond a reasonable doubt. [The subcommittee recommends that the renunciation defense be added to the code provision that requires a defendant to provide notice to the prosecution that he or she intends such a defense.]

**(6) PENALTIES FOR ATTEMPT:** [The subcommittee agreed to leave penalties for attempt to the sentencing subcommittee. Options are to punish attempts at the same level as the completed crimes, to punish them at the same level as the completed crimes but lower the highest level to one level lower, or to lower attempts to commit all levels of crimes to one category lower than the completed crimes (except of course attempts to commit the *lowest* level of crimes).]

## **SOLICITATION**

**(1) DEFINITION OF SOLICITATION:** A person is guilty of solicitation to commit a crime if the person commands, entreats, or otherwise attempts to persuade another to engage in specific conduct that would constitute a crime or an attempt to commit a crime, or would establish the person's complicity in a crime or an attempt to commit a crime with the purpose that such conduct be done. The circumstances must corroborate the purpose that such conduct be done by clear and convincing evidence.

**(2) UNCOMMUNICATED SOLICITATION:** A person is guilty of solicitation if the person has the purpose of communicating with another person despite a failure to actually communicate with that other person.

**(3) RENUNCIATION DEFENSE:** It is an affirmative defense to a prosecution for solicitation that the person, after soliciting another person to engage in conduct sufficient under subsection (1), persuaded the person not to engage in the conduct or otherwise prevented the commission of the crime, under circumstances manifesting a voluntary and complete renunciation of his or her criminal purpose.

A renunciation is not voluntary and complete if it is motivated in whole or in part (a) by a

belief that circumstances exist which increase the possibility that the person or another person will be detected or apprehended or which make commission of the crime more difficult or (b) by a decision to postpone the crime until another time or to substitute another victim or another but similar objective.

The defendant must raise the defense of renunciation, upon which the state must disprove renunciation beyond a reasonable doubt. [The subcommittee recommends that the renunciation defense be added to the code provision that requires a defendant to provide notice to the prosecution that he or she intends such a defense.]

**(4) PENALTIES FOR SOLICITATION:** [The subcommittee agreed to leave penalties for solicitation to the sentencing subcommittee. Options are to punish solicitations at the same level as the solicited crimes, to punish them at the same level as the solicited crimes but lower the highest level to one level lower, or to lower solicitations to commit all levels of crimes to one category lower than the solicited crimes (except of course solicitations to commit the *lowest* level of crimes).]

## **CONSPIRACY**

**(1) DEFINITION OF CONSPIRACY:** A person commits conspiracy with another if, with the purpose of promoting or facilitating the commission of a crime, the person does either of the following:

(a) Agrees with another that they or one or more of them will engage in conduct constituting the crime or an attempt or solicitation to commit the crime.

(b) Agrees to aid another in the planning or commission of the crime or of an attempt or solicitation to commit the crime.

**(2) SCOPE OF CONSPIRATORIAL RELATIONSHIP:** If a person guilty of conspiracy, as defined by subsection (1), knows that a person with whom he conspires to commit a crime has conspired with another person or persons to commit the same crime, he is guilty of conspiring with such other person or persons, whether or not he knows their identity, to commit such crime.

**(3) OVERT ACT REQUIREMENT:** A person shall not be convicted of conspiracy unless it is alleged and proven that at least one conspirator committed an overt act evidencing a purpose to accomplish the purpose of the conspiracy by criminal means.

**(4) CONSPIRACY WITH MULTIPLE CRIMINAL OBJECTIVES:** If a person conspires to commit more than one crime, he is guilty of only one conspiracy so long as such multiple crimes are the object of the same agreement or continuous conspiratorial relationship.

**(5) LAW ENFORCEMENT CO-CONSPIRATOR:** A person shall not be convicted of conspiracy if the only other person or persons involved in the conspiracy were acting at the behest of or as agents of a law enforcement agency in an investigation of the criminal activity alleged at the time of the formation of the conspiracy.

**(6) RENUNCIATION DEFENSE:** It is an affirmative defense to a prosecution for conspiracy that the person, after conspiring with another person to commit a crime, thwarted the success of the conspiracy under circumstances manifesting a voluntary and complete renunciation of his or her criminal purpose.

A renunciation is not voluntary and complete if it is motivated in whole or in part (a) by a belief that circumstances exist which increase the possibility that the person or another person will be detected or apprehended or which make accomplishment of the criminal objectives more difficult or (b) by a decision to postpone efforts to accomplish the criminal objectives until another time or to substitute another victim or another but similar objective.

The defendant must raise the defense of renunciation, upon which the state must disprove renunciation beyond a reasonable doubt. [The subcommittee recommends that the renunciation defense be added to the code provision that requires a defendant to provide notice to the prosecution that he or she intends such a defense.]

**(7) PENALTIES FOR CONSPIRACY:** [The subcommittee agreed to leave penalties for conspiracy to the sentencing subcommittee. Options are to punish conspiracies at the same level as the crimes that are the object(s) of the conspiracies, to punish them at the same level as the object crimes but lower the highest level to one level lower, or to lower conspiracies to commit all levels of crimes to one category lower than the object crimes (except of course conspiracies to commit the *lowest* level of crimes).]

*The subcommittee proposes retention of the following provision of the current Iowa code:*

#### **LOCUS OF CONSPIRACY**

A person commits a conspiracy in any county where the person is physically present when the person makes such agreement or combination, and in any county where the person with whom the person makes such agreement or combination is physically present at such time, whether or not any of the other conspirators are also present in that county or in this state, and in any county in which any criminal act is done by any person pursuant to the conspiracy, whether or not the person is or has ever been present in such county; provided, that a person may not be prosecuted more than once for a conspiracy based on the same agreement or combination.

*The subcommittee proposes addition of the following provision to the Iowa code:*

#### **INCAPACITY, IRRESPONSIBILITY, OR IMMUNITY OF PARTY TO SOLICITATION OR CONSPIRACY**

**(1) Except as provided in Subsection (2) of this Provision, it is immaterial to the liability of a person who solicits or conspires with another to commit a crime that:**

**(a) the person or the person solicited or conspired with does not occupy a particular position or have a particular characteristic that is an element of such crime, if the person believes that one of them does occupy that position or have that characteristic; or**

**(b) the person solicited or conspired with is irresponsible or has an immunity to prosecution or conviction for the commission of the crime.**

**(2) It is a defense to a charge of solicitation or conspiracy to commit a crime that if the criminal objective were achieved the person would not be guilty of a crime under the law that defining the offense or would not be guilty as an accomplice to the crime because: (a) the person is legally incapable of committing the offense and liability as accomplice would be inconsistent with the purpose of the provision that establishes such incapacity or (b) the person is a victim of the offense.**

*The subcommittee proposes the following revision and expansion of the current Iowa code provision regarding multiple conviction for conspiracy and a completed crime:*

#### **PROSECUTION AND CONVICTION FOR MULTIPLE CRIMES**

**(1) A person may be prosecuted for more than one crime based on the same conduct, including an attempt, solicitation, or conspiracy to commit a crime and the completed crime.**

**(2) A person may not be convicted for both an attempt to commit a crime and that crime.**

**(3) A person may not be convicted for both solicitation to commit a crime and that crime.**

**(4) A person may not be convicted for both a conspiracy to commit a particular crime and that crime.**

**(5) A person may not be convicted for more than one inchoate crime—attempt, solicitation, or conspiracy—based on conduct designed to commit or culminate in the commission of the same crime.**